Mr. Del Grosso: If I may, I say if I believe my voice has been recorded I therefore respectfully ask to be taken before a District Court Judge to be asked whether my conversation has been electronically intercepted. How could you determine that, I mean know beforehand there have been interceptions.

The Court: He wants to know whether his voice has been intercepted and whether that is the foundation of the questioning.

His voice has been intercepted but that is not a question.

The Court: That is datum 1. Does the interrogation which he plans to proceed with use as the basis the transcription or recording of his own voice.

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Mr. Del Grosso: Some of the questions will.

The Court: I do not know where that gets us, but as long as we have that. Now is a second suggestion, and perhaps at this point it becomes immaterial, do you mean to use recordings of his voice that were made on a New York State Interception Order.

Mr. Del Grosso: I have none, I have absolutely none, your Honor. I never received any transcriptions, any tapes, and I have no conversations with any State authorities concerning it. I may add any conversations I have had with any federal authorities I have asked that question. When I said federal authorities, I mean federal investigative agencies I have asked such questions.

The Court: You are asking them have we any State stuff.

Mr. Del Grosso: Right, and I never received any affirmative reply, it has always been no.

The Court: That clears up that much of the underbrush anyway. He has said two things at this point. We do not plan to seek an indictment against Mr. Langella, that we do want his testimony.

Mr. Del Grosso: Yes, your Honor.

Mr. Newman: And I take it then that we also have on the record the fact that the questions to be asked

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of Mr. Langella are a part or in whole based upon electronic interception.

The Court: In part yes.

Mr. Newman: I would therefore ask and this I acknowledge I may be premature on until questions are posed— I would therefore ask so I am not considered to have waived that right, that if these interceptions are predicated upon any electronic interception based on a Court Order, that the Court Order be submitted to your Honor at least in camera for your Honor to examine them under the authority of Persico.

The Court: Well, what do you say.

Mr. Del Grosso: I would disagree to that, your Honor. I am very much against it. First of all, the statute and the legislative history—

The Court: What did the footnote in Gelbart say.

Mr. Del Grosso: The footnote in Gelbart—

Mr. Newman: Calendra, your Honor.

The Court: Yes.

Mr. Newman: The footnote in Calendra I think you are making reference to seems to indicate as far as Calendra is concerned, it was not intended to deal with those cases where the party retains a statutory or constitutional right. They are only

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dealing with search and seizure. By its language they seem to exclude 2515 of Title 18. Is that the reference your Honor has.

The Court: Yes, something like that. That is why I asked to have my recollection refreshed and then it referred to Gelbart.

Mr. Del Grosso: 2515 is subject to 2517 and 2518, where they start talking.

The Court: About something which I disagree with, which you know.

Mr. Del Grosso: I am looking at the legislative history. I look at the statute and at the Court cases.

The Court: That is the point I did have to decide in an earlier case.

Mr. Newman: Yes your Honor, you decided in Viggria, Assaro—in any event the strike force took an appeal to the Circuit Court in connection with that which we are arguing April 26th and I served and filed my brief. I might add in defense of your Honor's position which is a rare pleasure, just yesterday.

The Court: A hopeless defense.

Mr. Newman: I hope not, your Honor, I hope it is a hopeful defense.

In any event, I think within the language of the case that they constantly rely on, within the lan-

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guage of Persico, the procedure I am requesting is in effect suggesting because they seem to commend Judge Judd in the Persico situation for having at least examined the Order in camera. I cannot see

how anybody is prejudiced by a submission to your Honor in camera of that material.

The Court: As you know, my own approach in these things is simply to ask whether this recording or recordings of Mr. Langella's voice were recordings that were made under an Order of the Judge of this Court.

Mr. Del Grosso: Yes your Honor.

The Court: And was the order still in effect at the time of the interception.

Mr. Del Grosso: Yes your Honor.

The Court: And were the requisite reports made and filed after the intereception.

Mr. Del Grosso: Yes your Honor.

The Court: Was the inventory served.

Mr. Del Grosso: The inventory was served. I went over that with Mr. Newman today and I do not think that the inventory—

The Court: Was it served on Mr. Langella.

Mr. Del Grosso: Mr. Langella, I will bring him to the Court and describe how we attempted to serve

him at the particular address he gave to the grand jury today.

The Court: No, all you had to do was in good faith.

Mr. Del Grosso: They were sent and refused. As to the inventory itself, I do not believe if the inventories were not sent, that is not a question here because the inventory, the first inventory there was a discrepancy of 30 days. Now I understand what that discrepancy is. As I explained to Mr. Newman, all

you have to do is write things down and think a little harder, which I did. As the statute specifically states, it is 90 days after the determination of the order or extension thereof. What I did was actually send out two inventories when I only had to send out one. So all inventories and all reports have been made. That is on record with the Clerk, they are filed with the Clerk, your Honor.

The Court: My view of the matter is that if it has already been passed on by a Judge of this Court then something better than an in camera inspection has already occurred, that is if they have been solemnly passed upon by a Judge of this Court and the practice of this Court, and I suppose universally that means, that after the affidavits were read by the

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Judge in the presence of the affiants, and that I think almost all of the Judges interrupt their reading to ask the question and get explanatory statements, and then swear the affiants to the affidavits and so indicate on the original affidavits before the Order is signed. For me to repeat that work is simply carrying coals to Newcastle here, it has been done.

Mr. Newman: With one or two minor differences, if your Honor please. For example, I would inquire through your Honor whether if since I gather from Mr. Del Grosso there were extensions of the original Order based on his last statement concerning the notices, I would ask your Honor to examine it with this in mind. If there came a point during the first interception when Mr. Langella's voice was re-

corded, whether in fact the subsequent amending orders included Mr. Langella's voice included as someone being recorded. I recognize I have the Kahn case against me from the United States Supreme Court but I would submit to your Honor that this is just one area that obviously the sitting Judge who issued the order could not have taken into consideration or would not have been brought to his attention as specifically as that.

The Court: I recollect that on the renewal or re-

sumption Order it is not usual to mention every voice heard but only to name those people not originally named as against whom in some form an extension of the scope of the order is sought or where an addition of that person's name lends some support to the foundation for seeking the further Order.

Mr. Del Grosso: I may say in line with your Honor's remarks there is no requirement that the government has to put in whose voice was picked up as long as there is probable cause.

The Court: I would not think so, I would hope we would be spared that.

Mr. Del Grosso: If we take it one step further, what he wants to hear is what we have, what is on the tapes and wants to hear everything on the tapes and whether or not he agrees with what is on the tapes and then maybe he will testify.

The Court: I do not think we have to look into the heart of Mr. Langella or Mr. Newman's heart.

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4:40 o'clock p.m.

Mr. Del Grosso: At this time, your Honor, the government makes an application to cite the witness, Mr. Langella, for contempt for refusal to answer the question put to him by the grand jury. He refused to answer.

The Court: Have you got the grand jury reporter?

Mr. Del Grosso: I'll get the grand jury reporter here.

Mr. Newman: May I suggest something else, Judge?

The Court: What's that?

Mr. Newman: I'm going to ask, if your Honor please, to consider granting a hearing because the last question that was asked of Mr. Langella or the first question or the questions asked of Mr. Langella which is the source of the application, to punish him for contempt, and I believe I'm paraphrasing it correctly, was if he knew one Alfonse Persico. That question was asked of him before the Manhattan grand jury, also. Therefore, asking now, Judge, since they have in effect asked your Honor to institute a proceeding against this particular witness now, and they've changed this category, I'm asking your Honor

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to consider granting a hearing—

The Court: If it's not to institute a proceeding against him. He was asked a question. He declined to answer it and the question that we're on now is, is it a question that he must answer? It hasn't been decided yet.

Mr. Newman: All right, sir.

I'm sorry I misinterpreted the procedure.

The Court: I'm glad to hear your argument although I had disposed of it.

Mr. Del Grosso: This is Miss Ng, the grand jury reporter. We can swear the witness and she can just read it.

The Court: Read the questions so we'll know it.

Mr. Del Grosso: The whole thing or the last?

The Court: The point where the difficulty started.

Miss Ng: "Question: Mr. Langella, you have conferred with your attorney?

"Answer: Yes.

"Question: Then what's your answer?

"Answer: I respectfully decline to answer—"

The Court: What was the question he was asked.

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Miss Ng: "Question: Mr. Langella, I'll repeat the question. Do you know Alfonse Persico?

"Answer: I would like to speak to my lawyer about that.

"Question: Did you just speak to your attorney, sir? I mean where do we stand? I am asking the questions.

"Answer: And I would like to speak to him about that.

"Question: Did you converse with your attorney concerning what's going on in here?

"Answer: I would like to speak to my attorney about the first question.

"Question: Before you go out, I will say this; that you have the right to speak with your attorney, how-

ever, you were there now. This is contempt by the very fact that you come in. You go out. You understand that?

"Answer: I would like to speak to my attorney about the first question."

The witness went out and came back in.

"Question: Mr. Langella, you have conferred with your attorney?

"Answer: Yes.

"Question: Then what's your answer?

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"Answer: I respectfully decline to answer on the grounds that my answer may tend to incriminate me or degrade me and in violation of my right under the fourth and fifth amendment to the United States Constitution. I also was advised that this grand jury I am presently under indictment in New York County awaiting trial and I refuse to answer.

"Question: Mr. Langella, perhaps you have read the same statement twice. Maybe there was another paper that you were given. You were just given that paper by your attorney?

"Answer: Yes.

"Question: You do realize that you have made that same statement prior to this?

"Answer: I refuse to answer.

"Question: Now I will ask the grand jury forelady to instruct the witness to answer pursuant to the terms of Judge Bartels' Order granting him immunity in that he had to testify and if he doesn't that he could be cited for contempt.

"The Forelady: I'm ordering you to answer.

"Answer: I refuse to answer.

"Question: All right, we'll go up to the Judge."

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The Court: I will not repeat what I said before. The reason for advising the witness that he need not answer the question I find to be wholly inadequate and I must direct the witness to answer the question. Before the grand jury, of course. And I must warn him that if he does not answer the question, then I will have to hold you in contempt.

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Mr. Del Grosso: We are back, your Honor.

The Court: We need the stenographer. And do we need the foreman?

Mr. Del Grosso: I don't know, but I will get them.

(Pause.)

Mr. Del Grosso: Again, the government renews its application to have Mr. Langella held in contempt pursuant to the Civil Contempt Proceedings or the provisions of Title 18 Section 1826 for failure to testify before the grand jury.

The Court: Could you come forward, please, Madam Foreman?

What is the section?

Mr. Del Grosso: I have 1826, Title 28.

The Clerk: What is your name?

Madam Foreman: Blanche Borland.

The Court: Mr. Langella, I am going to ask the grand jury Court reporter to read the part of the

transcript on which the application of Mr. Del Grosso to hold you in contempt is based.

Could you read it, please?

Grand Jury Reporter: "Mr. Langella, I repeat

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the question, do you know Alfonse Persico?

"Answer: I refuse to answer.

"Question: I asked the forelady again to order the witness to answer the question pursuant to the Order of Judge Bartels.

"The Forelady: I order you to answer the question, please.

"Answer: I refuse to answer.

"Question: I will have to go upstairs to Judge Dooling."

The Court: Is that what occurred before the grand jury, Mr. Langella?

Mr. Langella: Yes.

The Court: I had advised you before you went down to the grand jury that this and other questions put by the United States Attorney you would have to answer.

And if you failed to answer them, I would have to commit you for a civil contempt of Court.

Do you, sir, persist in your refusal to answer the question?

Mr. Langella: Yes.

The Court: I have no alternative then, Mr. Langella, but to hold you and I do now hold you in contempt pursuant to the provisions of Title 28 United

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States Code Section 1826. And you are ordered to

be confined to the United States Federal House of Detention on West Street in Lower Manhattan until such time as you are willing to give the testimony required of you by Mr. Del Grosso in connection with the present grand jury proceeding.

As I explained to you, that commitment will continue until you manifest a willingness to testify and return and do testify. Or until the grand jury as it may be extended expires.

Do you understand?

Mr. Langella: Yes, your Honor.

The Court: Very well. Marshal.

Mr. Newman: Your Honor, I would request in the alternative in view of the fact Mr. Langella has been available each and every time required, I might also add the last time he was subpoenaed Mr. Del Grosso was ill and we put it over for two weeks and Mr. Langella nevertheless appeared and had the proceeding continued voluntarily. He appeared before the grand jury for the continuance of the subpoena, and Mr. Del Grosso will attest to this. I would ask for a two week stay of commitment to permit me to go to the Circuit Court of Appeals.

Mr. Del Grosso: I would ask that be denied.